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**THE HIGH COURT OF SIKKIM : GANGTOK**

**WRIT PETITION (C) NO. 18 OF 2003**

In the matter of Article 226 of the Constitution of India.

Smt. Damber Kumari Pradhan,  
School Mother,  
Rongli Junior High School,  
East Sikkim. .... **Petitioner**

**VERSUS**

1. State of Sikkim  
Through Chief Secretary,  
Government of Sikkim,  
Gangtok.
2. Secretary,  
Department of Education,  
Government of Sikkim,  
Gangtok. .... **Respondents**

For the petitioner : Shri B. Sharma, Advocate.

For respondents : Shri S. P. Wangdi, Advocate  
General assisted by Shri J. B.  
Pradhan, Government Advocate.

**PRESENT: THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE.  
THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.**

**Date of judgment : 19<sup>th</sup> December, 2003.**

**J U D G M E N T**

**R. K. PATRA, C.J.**

In this writ petition under Article 226 of the  
Constitution of India the petitioner has prayed for a direction to

the respondents to promote her to the post of primary teacher with retrospective effect from the date when Arati Gurung was promoted as the primary teacher. She has also prayed for quashing of the order contained in the Education Department letter no. 757/DOP(E) dated 22<sup>nd</sup> September, 1999 (Annexure P-7) communicating to her that for appointment of primary teacher, the minimum educational qualification was class X (pass).

2. Briefly stated the case of the petitioner is that she was appointed as a school mother in the year 1977 and has been continuing in the said post since then. As per the practice prevailing in the state of Sikkim, the school mother is eligible to be considered for promotion as primary teacher if she gains sufficient experience as a school mother. In the year 1999, she came to know that Arati Gurung who was appointed as school mother four days after her appointment was promoted to the post of primary teacher. She made representations in February 1986, September 1998, July 1999, January 2000 and February 2002 (copies of representations are at annexures P-1 to P-5) saying that she stands in the same footing as that of Arati Gurung and as such, she should also be promoted as primary teacher. The Department of Education although was sympathetic to her but for the reasons best known to it she has been deprived of her legitimate claim. Surprisingly, she was communicated in the impugned letter no.757/DOP(E) dated 22<sup>nd</sup> September, 1999 (annexure P-7) to the effect that as per the existing rules the school mother can be appointed as primary teacher provided she

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possesses minimum educational qualification of class X pass and she should also qualify in the interview. According to her, she has been denied the promotion illegally violating equality clause enshrined in Article 14 of the Constitution of India.

3. Counter-affidavit has been filed on behalf of the respondents. Their case is that prior to 1982 there was no executive instruction nor any rule governing appointment of primary teachers. As a matter of practice, school mothers were being promoted as primary teachers subject to availability of vacancies in the school and preference was given to those school mothers who had appeared or passed class X. In the year 1982, the petitioner made a representation for absorbing her as primary teacher but her case could not be considered due to non-availability of vacancies. Her educational qualification at that time was only class VIII pass. From the year 1983, the previous practice of promoting school mothers as primary teachers has undergone change and it was decided that only those school mothers having educational qualification of class X pass were to be considered for promotion to the post of primary teachers. This was done in public interest to ensure that all primary teachers should have educational qualification of class X pass and to maintain quality education at the primary level. During the period 1970-80, a number of under-matric~~s~~ including school mothers were recruited/appointed as primary teachers on the condition that they would clear matriculation examination within three years of appointment failing which their appointment would

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be terminated. The Department later noticed that large number of such primary teachers could not fulfil the above conditions but they continued in service for a pretty long period and most of them were about to attend the age of superannuation. In view of such prevailing situation, the government in public interest took a policy decision as per the Cabinet Memorandum dated 14<sup>th</sup> February, 2002 at annexure R-1. The relevant portion of the said memorandum reads as follows :-

“As most of the teachers have very few years of service left, this is submitted for obtaining Government approval to waive the conditions that “their service would be terminated if they fail to pass the Class-X Board Examination” and the services of these teachers be regularised. These teachers would be put through a one-year teachers’ training course at the D.I.E.T. at Gangtok.

Cabinet Memorandum is prepared with the approval of the Hon’ble Minister, Education.

It is therefore, submitted for the consideration and approval of the Council of Ministers.”

This was approved in the cabinet meeting held on 8<sup>th</sup> February, 2002 at annexure R-2 which is as follows:-

“EDUCATION DEPARTMENT.

3.3 Proposal seeking approval to waive certain conditions of service of the under matric teachers as mentioned in the cabinet Memorandum No.475/EST/Edn dated 14.2.2000.

APPROVED.”

Later the government in the Education Department issued executive instruction in their notification dated 5<sup>th</sup> February, 2002 at annexure R-3, which reads as follows :-

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"GOVERNMENT OF SIKKIM  
DEPARTMENT OF EDUCATION

No.:01/06/18/2000/Est/Edn/345

Dated: 5/2/2000

NOTIFICATION

Sl. No.	Category of posts	Minimum essential qualification
1.	SCHOOL MOTHER	.....
2.	PRIMARY TEACHER	Class-XII pass of a recognised Board with Teachers Training Certificate (Basic Trained) from a recognised Institute.
3.	GRADUATE TEACHER	.....

By Order,

Sd/-  
( T. T. Dorji ) IAS  
Commissioner-cum-Secretary-Education"

This was modified in the government notification dated 10<sup>th</sup> August, 2001 at annexure R-4 which reads as under :-

"DEPARTMENT OF EDUCATION  
GOVERNMENT OF SIKKIM  
GANGTOK - 737 101  
SIKKIM

Ref. No.:DE(1)/Edn/Est/2001/671

Dated: 10/8/2001

NOTIFICATION

In partial modification of the Notification No:01/06/18/2000/Edn/345 dated 5/2/2000, the Governor is pleased to order that the requisite qualification for recruitment to the posts of Primary Teacher and Graduate Teacher shall be as under :-

Sl. No.	<u>Category of posts</u>	<u>Educational qualification</u>
1.	Primary Teacher	Class-XII pass of a recognised Board.  <u>Desirable:</u> Teachers Training Certificate (Basic Trained) from a recognised Instituted.

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2. Graduate Teacher .....

These provisions shall come into effect at once.

By Order.

Sd/- D. K. PRADHAN,  
JOINT SECRETARY, EDUCATION"

4. Shri Sharma, learned counsel strenuously argued that the injustice has been done to the petitioner in not promoting her as primary teacher although she stands in the same footing as that of Arati Gurung. He submitted that her case has been illegally ignored and her claim should not be rejected on the ground of delay or latches. Shri Sharma also urged by referring to annexures R-3 and R-4 that those notifications relate to recruitment of primary teachers and does not deal with promotion. According to him, recruitment means initial recruitment and does not cover case of promotion. Learned Advocate General on the other hand submitted that the petitioner's educational qualification is only class VIII pass and even as per the practice prevailing prior to the issuance of executive instructions contained in notifications dated 5<sup>th</sup> February, 2000 and 10<sup>th</sup> August, 2001 the minimum qualification required for considering the case of school mother for promotion was class X which she lacked. The learned Advocate General has produced before us a copy of the Education Department (Graduate and Post Graduate Teachers) Recruitment Amendment Rules, 2003 amending the (Primary Teachers, Graduate Teachers and Post Graduate Teachers) Recruitment Rules, 1991. As per the Amendment Rules, 2003 the method of recruitment for

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primary teachers is 50% by direct recruitment and 50% by promotion and so far as promotion is concerned the minimum educational qualification is class XII or equivalent examination of a recognised University. His submission is that since as per the law prevailing the petitioner does not possess the educational qualification (class XII), question of considering her case for promotion does not arise.

5. There is no dispute that even prior to the issuance of the execution instruction contained in notifications dated 5<sup>th</sup> February, 2000 and 10<sup>th</sup> August, 2001 (annexure R-3 and R-4) the minimum educational qualification required for considering promotion of a school mother to the post of primary teacher was class X pass. The petitioner's educational qualification is only class VIII pass. Therefore, even as per the practice prevailing prior to 2002 she was not eligible to be considered for promotion as she did not possess the educational qualification of class X pass. Shri Sharma's contention is that Arati Gurung has no educational qualification of class X pass but she was given promotion as primary teacher and since the petitioner stands in the same position as that of Arati Gurung, she should be given the benefit which was made available to Arati Gurung. It is not known as to the circumstances under which the said Arati Gurung came to be promoted as primary teacher even though she did not possess the minimum qualification of class X pass. Merely because some wrong was committed or some concession was given to Arati Gurung, this Court cannot issue a writ of

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mandamus asking the government to commit the same mistake or to show such indulgence to the petitioner. It may be noted that the petitioner was aware of Arati Gurung's promotion as back as 1981 which is evident from her representation dated 7<sup>th</sup> July, 1999 at annexure P-3 wherein she stated as follows :-

“That we both served till up to the year 1981 when Smt. Arati Gurung got promotion to the post of Asstt. Teacher. Accordingly I also submitted an application to the Department for my promotion to the post of Asstt. Teacher and the file was under process. But with the reason, best known to the department my file was kept pending.”

From the above, it can be held that she had knowledge of Arati Gurung's promotion since 1981. Her repeated representations were considered and were rejected by the Department which is clear from the another paragraph of her representation dated 7<sup>th</sup> July, 1999 (annexure P-3). For the sake of convenience, we may quote the same:-

“I again submitted an application on the 7<sup>th</sup> day of Sept. 1998 but my request has been turned down by the authority of Education Department.”

While considering her representation the Chief Secretary in his order dated 7<sup>th</sup> July, 1999 noted as follows :-

“2. She, however, states that her friend Arati Gurung who has also not passed Class X has been appointed as Primary Teacher. The representation may kindly be examined with reference to existing rules and act strictly according to rules without any favour to any person. If Mrs. Arati Gurung and the applicant are similarly placed, the applicant may also be promoted to the post of Primary Teacher. On the other hand, if the promotion of Mrs. Arati Gurung at the relevant time was against the rules, her promotion may be cancelled.”

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Pursuant to the said order, the department considered the matter and it was notified to the petitioner in letter dated 22<sup>nd</sup> September, 1999 at annexure P-7 that the minimum qualification for appointment to primary teachers being class X pass and as she does not possess such qualification, her representation does not merit any consideration.

6. Shri Sharma is not right in his submission that the executive instruction of the government contained in the notification dated 5<sup>th</sup> February, 2000 read with 10<sup>th</sup> August, 2001 does not deal with case of promotion. The meaning of the word 'recruitment' came to be considered by the Supreme Court in K. Narayanan vs. State of Karnataka AIR 1994 SC 55. In paragraph 6 of the judgment the Court observed as follows :-

"Art. 309 of the Constitution empowers appropriate legislature to frame rules to regulate recruitment to public services and the post. 'Recruitment' according to dictionary means 'enlist'. It is comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well known methods of recruitment. Even appointment by transfer is not unknown."

For the reasons mentioned above, since recruitment also includes promotion and the case of the petitioner was to be considered pursuant to the said executive instruction and as she does not possess the minimum qualification prescribed therein (class XII pass) her claim has no legal foundation. In the Amendment Rules, 2003 framed under the proviso to Article 309 of the Constitution it has been provided as follows:-

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Name of post	Classification	Scale of pay	Whether Selection post or non selection post	Method of recruitment (whether by direct/promotion/deputation/transfer etc. & % of vacancies to be filled by various method)	Age limit for direct recruitment	Educational Others & qualification required for direct recruitment	Educational & other qualification required for promotion including experience training/ length of service in the lower posts, (whether age and educational qualification prescribed for the direct recruitment will apply in the case of promotion)
1	3	4	5	6	7	8	9
Primary Teacher	....	...	....	50% by direct recruitment and 50% by promotion failing which 100% by direct recruitment	....	....	Age - No Qualification - Yes As in the case of direct recruitment

In view of the fact that the field of promotion to primary teacher is now governed by the rules made under the proviso to Article 309 of the Constitution of India, the case of the petitioner has to be considered in the light of those rules which prescribe the minimum qualification for promotion to the post of primary teacher is class XII. As the petitioner does not possess the said qualification, we cannot accede to her prayer.

7. In the result, we do not find any merit in this writ petition which is accordingly dismissed. There shall no order as to costs.

  
**( R. K. Patra )**  
**Chief Justice**  
 19.12.2003

I agree.

  
**( N. Surjmani Singh )**  
**Judge**  
 19.12.2003